

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:01-CR-93-1H

UNITED STATES OF AMERICA

v.

RUSSELL WATKINS

MOTION FOR REDUCTION OF
SENTENCE UNDER 18 U.S.C. § 3582(c)

The Petitioner, Russell Watkins, by and through undersigned counsel, respectfully moves this Court, pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10(c), for an order reducing his guideline range by two levels based on the new retroactive amendments to the crack cocaine guidelines and sentencing him to 112 months in prison. In support of this motion, the petitioner shows the following:

On August 20, 2001, Mr. Watkins pled guilty to one count of conspiracy to distribute and possess with intent to distribute more than 50 grams of cocaine base in violation of 21 U.S.C. § 846. The Presentence Report (PSR) prepared in advance of sentencing concluded that, under the relevant conduct rules, Mr. Watkins should be held accountable for 840.3 grams of crack. This translated into a base offense level of 36. Mr. Watkins's total offense level, after all enhancements and reductions, was 35 which, combined with his Criminal History Category of IV, resulted in a guideline imprisonment range of 235 to 293 months. Mr. Watkins was sentenced to the custody of the Bureau of Prisons for 235 months.

Mr. Watkins's sentence was later reduced to 140 months based on the government's motion pursuant to FED.R.CRIM.P. 35. It appears that this sentence represented an approximately 40% reduction from the bottom of the applicable guideline range.

Application of the newly amended crack guidelines reduces Mr. Watkins's total offense from 35 to 33 and results in a new sentencing guideline range of 188 to 235 months. Application note 3 to § 1B1.10 provides that when the original sentence was lower than the applicable guideline range by virtue of a departure, the court may reduce that sentence by a comparable amount from the amended guideline range. A 40% reduction from the bottom of the new range would result in a sentence of 112 months. This is the sentence Mr. Watkins asks that the Court impose in this case.

The undersigned has been informed by counsel for the government that it intends to file a response to the petitioner's motion. Petitioner requests an opportunity to reply to the government's response.

The parties agree that should Congress invalidate or amend the aforesaid retroactive amendment before this motion is decided by the Court, this motion will be withdrawn as moot. However, Petitioner reserves the right to raise any and all legal challenges to any such action, if taken.

For the foregoing reasons, the petitioner respectfully requests that his motion be granted and that the Court impose a sentence of 112 months in prison.

Respectfully requested this 25th day of June, 2008.

/s/ Thomas P. McNamara
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LR 57.1 Counsel
Appointed

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon:

ROBERT J. HIGDON, JR.
Assistant United States Attorney
Suite 800, Federal Building
310 New Bern Avenue
Raleigh, NC 27601-1461

by electronically filing the foregoing with the Clerk of Court on June 25, 2008, using the CM/ECF system which will send notification of such filing to the above.

This the 25th day of June, 2008.

/s/ Thomas P. McNamara
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